

## Message Text

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ORIGIN L-03

INFO OCT-01 AF-10 ARA-16 EA-11 EUR-25 NEA-10 RSC-01 IO-14

ISO-00 SS-20 H-03 NSC-10 EB-11 A-01 CPR-02 CIAE-00

INR-10 NSAE-00 PA-04 USIA-15 PRS-01 SPC-03 /171 R

DRAFTED BY L:MBFELDMAN:LHS

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P R 182329Z OCT 73

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TO USMISSION USUN NY PRIORITY

INFO AMEMBASSY LONDON

ALL AMERICAN REPUBLIC DIPLOMATIC POSTS

C O N F I D E N T I A L STATE 207143

LONDON FOR NELSON

E.O. 11652: GDS

TAGS: UNGA, PINS

SUBJECT: UNGA LEGAL COMMITTEE PROTECTION OF DIPLOMATS

REFS: (A) USUN 4020; (B) USUN 3899; (C) USUN 3963;

(D) FELDMAN/ROSENSTOCK TELCON 10/18/73

1. BROAD ASYLUM PROVISION PROPOSED BY CERTAIN LA DELEGATIONS (REF. C) GOES TO VERY HEART OF THE CONVENTION WHOSE MOST BASIC CONCEPT IS THAT PERPETRATORS OF CRIMES OF VIOLENCE AGAINST PROTECTED PERSONS SHALL BE BROUGHT TO JUSTICE. SPECIAL REASONS FOR ACCEPTING SUCH LANGUAGE IN OAS CONVENTION ARE WELL SET OUT REF (B). INCLUSION OF SUCH A BROAD PROVISION IN UN CONVENTION COULD HAVE SERIOUS SPILL-OVER EFFECTS WITH RESPECT TO CONVENTIONS ON AIR SECURITY AS WELL AS ANY FUTURE INTERNATIONAL LEGISLATION ON  
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TERRORISM. THEREFORE, WE BELIEVE U.S. OBJECTIVE SHOULD BE



TO OBTAIN CONVENTION WITHOUT SUCH LANGUAGE EVEN IF IT  
MEANS THAT A NUMBER OF LA STATES DO NOT BECOME PARTIES.  
GENERALLY THOSE LA STATES WILL BE PARTY TO THE OAS  
CONVENTION ON THIS SUBJECT.

2. THEREFORE, OUR FIRST PREFERENCE WOULD BE FOR THE LA'S  
TO WITHDRAW THIS PROPOSAL AND TO LEAVE OPEN FOR SUBSEQUENT  
RESOLUTION THE COMPATIBILITY OF THIS CONVENTION WITH THE  
INTER-AMERICAN TREATIES. OUR NEXT PREFERENCE WOULD BE TO  
DEFEAT THIS PROPOSAL IF THE SITUATION IN NEW YORK PERMITS.  
HOWEVER, WE WOULD NOT WISH TO RISK THE LOSS OF SUCH A  
VOTE AND POSSIBLE ADVERSE SECONDARY EFFECTS OF SUCH A LOSS  
IF IT SHOULD PROVE POSSIBLE TO DEVELOP AN ACCEPTABLE  
COMPROMISE WITH THE MEXICAN POSITION. WE AGREE WITH YOUR  
POINT REF. (A) THAT OPENING THE CONVENTION TO RESERVATIONS  
ON SUCH FUNDAMENTAL MATTERS WOULD BE A POOR APPROACH. WE  
WOULD STILL HOPE TO FIND SUPPORT IN SOME LA DELEGATIONS  
FOR THE CONCEPT THAT PROSECUTION IS NOT INCOMPATIBLE WITH  
ASYLUM. HOWEVER, IF, AS YOU INDICATE, (REF. (D)) THERE  
IS NO FLEXIBILITY ON THIS POINT, WE COULD SEEK A COMPROMISE  
WITH THE LATIN AMERICAS ON BASIS OF PARA. 3 WHICH REFLECTS  
THE FOLLOWING CONCEPTS (A) PERPETRATORS OF COVERED OFFENSES  
ARE NOT ENTITLED TO ASYLUM AS A MATTER OF LAW (OAS  
RESOLUTION OF JUNE 30, 1970, UNANIMOUSLY CHARACTERIZED  
THESE OFFENSES AS COMMON CRIMES REGARDLESS OF MOTIVE);  
(B) THE RECEIVING STATE DETERMINES THE NATURE OF THE ACTS  
AND THE APPLICATION OF THE STANDARDS OF THE CONVENTION  
(ART. 4 OF THE CARACAS CONVENTION ON DIPLOMATIC ASYLUM  
AND ART. 3 OAS CONVENTION ON TERRORISM) AND (C) IF ASYLUM  
IS GRANTED, THE LEGAL REGIME ESTABLISHED BY THE INTER-  
AMERICAN CONVENTIONS APPLIES (I.E., ACCORDING TO CERTAIN  
LA'S PROSECUTION WOULD NOT BE REQUIRED). THIS APPROACH  
WOULD BE MUCH EASIER FOR US TO ACCEPT IF IT WERE CONFINED  
TO EXISTING TREATIES ON DIPLOMATIC ASYLUM.

3. ACCORDINGLY, YOU ARE AUTHORIZED TO EXPLORE INFORMALLY  
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AND AD REFERENDUM THE FOLLOWING FORMULA:

"NONE OF THE PROVISIONS OF THIS CONVENTION SHALL BE  
CONSTRUED AS MODIFYING THE PROVISIONS OF EXISTING TREATIES  
ON DIPLOMATIC ASYLUM WHICH ESTABLISH THE COMPETENCE OF THE  
STATE GRANTING ASYLUM TO DETERMINE WHETHER THE FACTS  
CONSTITUTE THE "OFFENSE" DEFINED IN ARTICLE 2 TO WHICH  
THE OBLIGATIONS OF THIS CONVENTION APPLY.



4. WE WOULD WELCOME ANY OTHER FORMULAE MEETING OUR  
OBJECTIVES AND WOULD SUGGEST THAT FURTHER THOUGHT BE  
GIVEN TO POSSIBILITY OF AN LA DECLARATION ONCE REFERRED  
TO BY GONZALEZ-GALVEZ. KISSINGER

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## Message Attributes

**Automatic Decaptioning:** X  
**Capture Date:** 01 JAN 1994  
**Channel Indicators:** n/a  
**Current Classification:** UNCLASSIFIED  
**Concepts:** n/a  
**Control Number:** n/a  
**Copy:** SINGLE  
**Draft Date:** 18 OCT 1973  
**Decaption Date:** 01 JAN 1960  
**Decaption Note:**  
**Disposition Action:** RELEASED  
**Disposition Approved on Date:**  
**Disposition Authority:** thigpegh  
**Disposition Case Number:** n/a  
**Disposition Comment:** 25 YEAR REVIEW  
**Disposition Date:** 28 MAY 2004  
**Disposition Event:**  
**Disposition History:** n/a  
**Disposition Reason:**  
**Disposition Remarks:**  
**Document Number:** 1973STATE207143  
**Document Source:** CORE  
**Document Unique ID:** 00  
**Drafter:** MBFELDMAN:LHS  
**Enclosure:** n/a  
**Executive Order:** GS FELDMAN  
**Errors:** N/A  
**Film Number:** n/a  
**From:** STATE  
**Handling Restrictions:** n/a  
**Image Path:**  
**ISecure:** 1  
**Legacy Key:** link1973/newtext/t19731023/aaaaaqre.tel  
**Line Count:** 120  
**Locator:** TEXT ON-LINE  
**Office:** ORIGIN L  
**Original Classification:** CONFIDENTIAL  
**Original Handling Restrictions:** n/a  
**Original Previous Classification:** n/a  
**Original Previous Handling Restrictions:** n/a  
**Page Count:** 3  
**Previous Channel Indicators:**  
**Previous Classification:** CONFIDENTIAL  
**Previous Handling Restrictions:** n/a  
**Reference:** (A) USUN 4020; (B) USUN 3899; (C) US, UN 3963;  
**Review Action:** RELEASED, APPROVED  
**Review Authority:** thigpegh  
**Review Comment:** n/a  
**Review Content Flags:**  
**Review Date:** 10 OCT 2001  
**Review Event:**  
**Review Exemptions:** n/a  
**Review History:** RELEASED <10-Oct-2001 by smithrj>; APPROVED <30-Oct-2001 by thigpegh>  
**Review Markings:**

Declassified/Released  
US Department of State  
EO Systematic Review  
30 JUN 2005

**Review Media Identifier:**  
**Review Referrals:** n/a  
**Review Release Date:** n/a  
**Review Release Event:** n/a  
**Review Transfer Date:**  
**Review Withdrawn Fields:** n/a  
**Secure:** OPEN  
**Status:** NATIVE  
**Subject:** UNGA LEGAL COMMITTEE PROTECTION OF DIPLOMATS  
**TAGS:** PINS, UNGA  
**To:** USUN NEW YORK  
**Type:** TE  
**Markings:** Declassified/Released US Department of State EO Systematic Review 30 JUN 2005